



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 9, 1993

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

Open Records Decision No. 618

Re: Whether section 21(j)(3) of article 6687b, V.T.C.S. in conjunction with section 552.101 of the Government Code, V.T.C.S. prohibits the Texas Department of Public Safety from disclosing traffic conviction information contained within individual driver's license files (RQ-537)

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552.¹ The Texas Department of Public Safety (the "department") received a request for information regarding traffic tickets issued by various cities. Specifically, the request is for:

*All traffic tickets issued by the cities of Hedwig Village, Hunter's Creek Village, Bunker Hill Village, Piney Point Village, Spring Valley Village and Hilshire Village for 1992, and:

*To whom those tickets were issued, including the individual's name, address, age, sex and race.

You state that the department does not have information on traffic tickets issued by various cities, and that the only information it has on traffic convictions is maintained within individual drivers' license files. You claim that the information on traffic convictions is specifically excepted from disclosure by section 21(j)(3) of article 6687b, V.T.C.S., in conjunction with section 552.101 of the Open Records Act. You contend that a list of the individuals who received traffic citations would be a "class-type listing," which the department is not authorized to provide pursuant to section 21(j)(3). You claim, therefore, that a "class-type listing" is made confidential by law by section 552.101 of the Government Code.

¹We note that V.T.C.S. article 6252-17a was repealed by the 73rd Legislature. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Section 552.101 excepts from required public disclosure information deemed confidential by judicial, statutory, or constitutional law. Section 21(j) of article 6687b provides:

(1) In addition to the provisions of this section for the release of individual driver's license information, the department may provide a magnetic tape of the names, addresses, and dates of birth of *all* licensees contained in the department's basic drivers' license record file. In addition, on a periodic basis the department is authorized to provide purchasers of this information any additions of *names, addresses, and dates of births*.

(2) Before the department may release the information described in Subdivision (1) of this subsection, the purchaser must agree to delete the name, address, and date of birth of any person whose name is also included on the mail or telephone preference list maintained by a recognized trade association which is used to remove the name of any individual who has requested that the individual's name not be made available for solicitation purposes.

(3) *The department is not authorized to provide class-type listings from the basic drivers' license record file to any person or business except as provided by Section 44B(d) of this Act.* [Emphasis added.]²

In Open Records Decision No. 465 (1987) this office held that the department was required to identify specific drivers license files containing information concerning "persons scheduled for administrative hearings to suspend their drivers license for excessive violations within a specified time frame." Apparently in response to our holding in Open Records Decision No. 465, the legislature amended section 21 by adding subsection (j) to restrict release of certain information. See Senate Comm. on Transp., Bill Analysis, S.B. 161, 70th Leg. (1987). Because the legislature evidently added subsection (j) to overrule Open Records Decision No. 465, in Open Records Decision No. 498 (1988), we held that section 21(j)(3) prohibited the department from creating a list that identified driver's license files containing specific information in order to make the information available under the Open Records Act.

We must agree that the requestor in the present case seeks a "class-type listing" under section 21(j)(3) similar to the information requested in Open Records Decision No. 498. The request at issue here is similar to that at issue in Open Records Decision No. 498 because it requires the department to create a specific class list of people who have

²Section 44B(d) provides for the release of class-type information in driver's license files to state and federal agencies for official purposes only. Article 6687b was recently amended by the 73rd Legislature. See S.B. 510, Acts 1993, 73d Leg., ch. 790, at 3104.

been convicted of traffic violations in various cities from records contained within their individual driver's license files. The department is therefore prohibited from disclosing the requested information.

The department is required by law to keep a record of all traffic convictions of licensed drivers to be used to determine whether to renew their licenses. *See* V.T.C.S. art. 6687b, §§ 21(b)(1), (b)(3), (e); *see also* V.T.C.S. art. 6701d, § 152 (courts required to give traffic conviction information to the department). The department must therefore maintain traffic conviction information in the individual files of licensed drivers. Sections 21(j)(1) and (2) provide a means by which the department may release only the names, addresses and dates of birth of all licensees. However, section 21(j)(3) now limits access when the requestor requires the department to classify licensees by specific types, such as a request for a list of licensees who have traffic convictions on file, or a list of those who might be subject to administrative hearings to suspend their license. *See* Open Records Decision No. 498. A request for traffic conviction information from the department in the form requested is subject to section 21(j)(3) of article 6687(b), because the request requires the department to create a class-type list of specific driver's license files containing traffic conviction information.

Despite the broad restriction on release of a "class-type listing," the department is not precluded from releasing traffic conviction information about specific individuals. In fact, the information is expressly available under section 21(e), provided that the requestor submits the individual's driver's license number or full name. Section 21(e) provides in part:

The Department is authorized to provide information pertaining to an individual's date of birth, current license status, most recent address, and reported traffic law convictions and motor vehicle accidents in which the individual received a citation, by date and location, occurring within the immediate past three (3) year period when requested from the records of the Department on written request and payment of a Six Dollar (\$6.00) fee by a person who submits the individual's driver's license number or his full name and date of birth and who shows a legitimate need for the information. . . .

The purpose of section 21(j)(3) appears to be to relieve the department of the administrative burden of compiling a list based primarily on location and existence of traffic convictions, *i.e.*, a class-type list, when the requestor does not have individual driver's license numbers or names. Thus section 21(j)(3) does not deem such information confidential by law: it denies access for specific types of requests.³

³Although we agree that the requestor seeks a "class-type listing," we do not agree that the information is deemed confidential by law under section 552.101 of the Open Records Act. As a general rule, section 552.101 requires *express* language providing that the information is confidential or

We note that the records at issue may be available through other means. Although the judiciary is not subject to the Open Records Act pursuant to section 552.003(b), Texas courts have recognized a common-law right of the public to copy and inspect records of the judiciary. See Attorney General Opinions DM-166 (1992) (historical perspective of right of public access to records of judiciary). Magistrates or judges of courts not of record and clerk of courts of record are required to maintain a record of individuals charged with traffic violations and to provide traffic conviction information to the department. V.T.C.S. art. 6701(d), § 152(a), (b). Records held by county clerks are open to public inspection pursuant to statutory law. Local Gov't Code § 191.006. In addition, the information may be available through local law enforcement agencies under the Open Records Act. See, e.g., *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision Nos. 243 (1980); 127 (1976). However, a local law enforcement agency is not necessarily required to compile a list of people ticketed for traffic violations if the requestor is given access to the records from which such information would be extracted. Open Records Decision No. 243 (police department need not create list of persons arrested under specific statute if access given to police blotter).

In conclusion, although the type of information requested here may be obtained through alternative sources, the legislature has chosen to restrict access to the same information from the Department of Public Safety. We cannot question the wisdom of this policy: we are required only to interpret the statute as enacted.

(footnote continued)

prohibiting its release to the public. See Open Records Decision No. 478 (1987). Section 21(j)(3) merely states that the department "is not authorized to provide" such information.

The language of section 21(j)(3) of article 6687(b) is at odds with section 552.021(a) of the Open Records Act which provides in relevant part:

Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained:

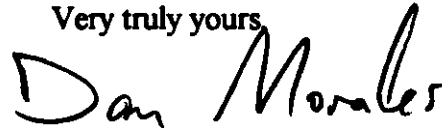
- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

When no exception under section 552.021 applies, and the information is "collected, assembled or maintained" by a governmental agency, as in the case here, it is generally presumed open under the Open Records Act. However, section 21(j)(3) states that the department "is not authorized" to provide "class-type" information from driver's license files.

S U M M A R Y

A request to the Department of Public Safety (the "department") for a list of individuals, including name, address, age, sex and race, who were ticketed for traffic violations in specific cities is no longer available as the result of the enactment of section 21(j)(3) of article 6687b, V.T.C.S. That section specifically governs this request for information because it requires the department to create "a class-type listing from the basic driver's license record file." Section 21(j)(3) provides that the department is not authorized to provide such a "class-type listing." Thus, the statute effectively precludes access to this information although it is not deemed confidential by law.

Very truly yours

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, flowing style.

DAN MORALES
Attorney General of Texas

WILL PRYOR
First Assistant Attorney General

MARY KELLER
Deputy Attorney General for Litigation

RENEA HICKS
State Solicitor

MADELEINE B. JOHNSON
Chair, Opinion Committee

Prepared by Loretta R. DeHay
Assistant Attorney General